

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK RYDELL CARNEY,
Plaintiff,
v.
L. CUEVAS, et al.,
Defendants.

Case No. [18-cv-03644-WHO](#) (PR)

ORDER OF SERVICE;

**ORDER DIRECTING
DEFENDANTS TO FILE A
DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION;**

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff Frederick Rydell Carney has stated Equal Protection and First Amendment claims against three prison guards at Salinas Valley State Prison. The Court directs defendants to file in response to the operative complaint a dispositive motion, or a notice regarding such motion, on or before **August 5, 2019**. The Court further directs that defendants comply with the notice provisions detailed in Sections 2.a and 10 of the conclusion of this order.

DISCUSSION

i. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune

from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

ii. Claims

Carney alleges in his amended complaint that from January 2015 to October 2016 Salinas Valley prison guards L. Cuevas, G. Marquez, and C. Hernandez violated his equal protection rights when they allowed only Hispanic inmates to leave their cells to attend their job assignments, but refused to allow Carney, an African-American, to leave his cell to go to his job assignment. He also alleges that Cuevas, Marquez, and Hernandez retaliated against him in violation of the First Amendment. When liberally construed, Carney has stated equal protection and First Amendment claims against Cuevas, Marquez, and Hernandez.

Carney’s claims against other state actors are DISMISSED (without prejudice) because they are unrelated to his claims against Cuevas, Marquez, and Hernandez. *See* Federal Rule of Civil Procedure 20 (claims must be based on “the same transaction, occurrence, or series of transactions or occurrences” and pose a “question of law or fact

common to all defendants.”) If Carney wishes to pursue claims against these other persons, he must file a separate civil rights action.

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. The Clerk of the Court shall issue summons and the United States Marshal shall serve, without prepayment of fees, a copy of the operative complaint in this matter (Dkt. No. 8), all attachments thereto, and a copy of this order upon L. Cuevas, G. Marquez, and C. Hernandez at Salinas Valley State Prison. The Clerk shall also mail courtesy copies of the complaint and this order to the California Attorney General’s Office.

2. On or before **August 5, 2019**, defendants shall file a motion for summary judgment or other dispositive motion with respect to the claim(s) in the complaint found to be cognizable above.

a. If defendants elect to file a motion to dismiss on the grounds plaintiff failed to exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), defendants shall do so in a motion for summary judgment, as required by *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

b. Any motion for summary judgment shall be supported by adequate factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor qualified immunity found, if material facts are in dispute. If any defendant is of the opinion that this case cannot be resolved by summary judgment, he shall so inform the Court prior to the date the summary judgment motion is due.

3. Plaintiff’s opposition to the dispositive motion shall be filed with the Court and served on defendants no later than forty-five (45) days from the date defendants’ motion is filed.

4. Defendants shall file a reply brief no later than fifteen (15) days after plaintiff’s opposition is filed.

5. The motion shall be deemed submitted as of the date the reply brief is due.

1 No hearing will be held on the motion unless the Court so orders at a later date.

2 6. All communications by the plaintiff with the Court must be served on
3 defendants, or defendants' counsel once counsel has been designated, by mailing a true
4 copy of the document to defendants or defendants' counsel.

5 7. Discovery may be taken in accordance with the Federal Rules of Civil
6 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
7 Rule 16-1 is required before the parties may conduct discovery.

8 8. Extensions of time must be filed no later than the deadline sought to be
9 extended and must be accompanied by a showing of good cause.

10 9. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs be
11 given "notice of what is required of them in order to oppose" summary judgment motions
12 at the time of filing of the motions, rather than when the court orders service of process or
13 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir.
14 2012). Defendants shall provide the following notice to plaintiff when they file and serve
15 any motion for summary judgment:

16 The defendants have made a motion for summary judgment by which they
17 seek to have your case dismissed. A motion for summary judgment under
18 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

19 Rule 56 tells you what you must do in order to oppose a motion for summary
20 judgment. Generally, summary judgment must be granted when there is no
21 genuine issue of material fact — that is, if there is no real dispute about any
22 fact that would affect the result of your case, the party who asked for summary
23 judgment is entitled to judgment as a matter of law, which will end your case.
24 When a party you are suing makes a motion for summary judgment that is
25 properly supported by declarations (or other sworn testimony), you cannot
26 simply rely on what your complaint says. Instead, you must set out specific
27 facts in declarations, depositions, answers to interrogatories, or authenticated
28 documents, as provided in Rule 56(e), that contradict the facts shown in the
defendants' declarations and documents and show that there is a genuine issue
of material fact for trial. If you do not submit your own evidence in opposition,
summary judgment, if appropriate, may be entered against you. If summary
judgment is granted, your case will be dismissed and there will be no trial.

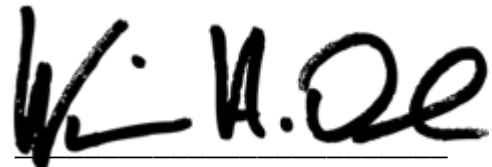
Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

1 10. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
2 Court informed of any change of address and must comply with the Court's orders in a
3 timely fashion. Failure to do so may result in the dismissal of this action for failure to
4 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

5 11. The Clerk shall terminate all defendants except Cuevas, Marquez, and
6 Hernandez.

7 **IT IS SO ORDERED.**

8 **Dated:** May 6, 2019
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WILLIAM H. ORRICK
United States District Judge